

FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons (ISOR) is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS:

On October 11, 2013, the Notice of Proposed Regulations was published which began the public comment period. The Department's Notice of Change to Regulations #13-03 was also mailed the same day in addition to being posted on the California Department of Corrections and Rehabilitation (CDCR) Internet and Intranet websites. The Department received ten written comments, which are included below under the heading *Summaries and Responses to the Written Public Comments*. A public hearing was held on December 2, 2013 with no one providing verbal comments.

After the initial Notice of Change to Regulations was published and mailed, it was determined that additional changes to the originally proposed text and to the Non- Disciplinary Segregation (NDS) Personal Property Matrix were needed. It was determined that clarification was necessary in subsection 3335(b)(1) to establish that the placement of inmates on NDS status could not result from their own misconduct. Such misconduct must have warranted a Rules Violation Report. Additionally, the NDS Personal Property Matrix was amended to correct an oversight which allowed an inmate in Privilege Group U or C to possess a "splitter". This inadvertently allowed a Privilege Group U or C inmate to possess an accessory to a television set; however, this is not necessary due to the fact that inmates in these Privilege Groups are not authorized to possess a television set.

These revisions were presented to the public by issuance of a 15-Day Renotice, and an effective comment period from January 6, 2014 to January 22, 2014. The 15-Day Renotice was posted to the CDCR Internet and Intranet websites. The changes to the text and the reasons for them can be found below under the heading *Changes to the Proposed Text of Regulations (15-Day Renotice)*. There were no comments received during the 15-Day Renotice period.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS (15-DAY RENOTICE)

As determined by the California Department of Corrections and Rehabilitation, the attached text contains the following changes:

Subsection 3335(b)(1) is amended. It was determined that this subsection could be interpreted to mean that inmates could be placed on Non-disciplinary Segregation status for safety concerns resulting from their own misconduct. Language is added to clarify that misconduct warranting a Rules Violation Report does not meet criteria for placement in Non-Disciplinary Segregation.

Non-Disciplinary Segregation (NDS) Personal Property Matrix is amended. An inconsistency was discovered pertaining to a “splitter”. Current regulations do not authorize inmates in a Privilege Groups “U” and “C” possession of a television; therefore, the implied accessory of a “splitter” is not allowed for possession by inmates in these Privilege Groups. The revision date of the Matrix has been changed from 8/14/13 to 12/30/13 to reflect that the NDS Personal Property Matrix is being revised through this public re-notice.

SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS

Commenter #1

Comment 1A: Commenter asked why inmates in Privilege Group D who are housed in Administrative Segregation Unit (ASU) for disciplinary purposes are permitted to have a television set, but inmates in Privilege Group C who are housed in ASU for non-disciplinary segregation are not.

Accommodation: None.

Response 1A: Current Title 15, Section 3044(f), provides criteria defining Privilege Groups (PG) and identifies privileges afforded. Inmates assigned to PG C are afforded certain items of property as identified in the Authorized Personal Property Schedule referenced in Section 3190.

Comment 1B: Commenter suggests inconsistencies with the NDS Personal Property Matrix as Privilege Group D inmates are afforded a television, yet not a cable or a splitter to connect the television; and, PG C inmates are allowed a splitter, yet not a television and or a cable.

Accommodation: Partial Accommodation

Response 1B: The Department recognized the inconsistencies as oversights in the proposed Matrix, and has taken the necessary steps to correct and clarify that Privilege Group C inmates are not allowed a splitter. Inmates placed in Privilege Group D are not designated NDS; therefore, they are not subject to the NDS Personal Property Matrix. This revision was announced in the “Notice of Change to Text as Originally Proposed” on January 6, 2014.

Commenter #2

Comment 2A: Commenter states that the implementation of proposed regulations would cost money with the installation of telephone lines, and officers to monitor the inmates using the phone.

Accommodation: None.

Response 2A: The Department determined in the Economic Impact Analysis that no additional funds will be required to implement this regulation change.

Commenter #3

Comment 3A: Commenter disagrees with the allowable Non-Disciplinary Personal Property Matrix and feels that the Department did not look completely at least restrictive options, as required by statute, for those classes of prisoners.

Accommodation: None.

Response 3A: The Department disagrees with the comment. As stated in the Initial Statement of Reason, the CDCR has recognized inmates may be placed in ASU for administrative reasons, thus they do not pose as high of a threat to the safety and security of the institution. Subsequently, these proposed regulations will afford inmates segregated in ASU for non-disciplinary reasons privileges more consistent, but not identical, with their pre-segregation privilege group. The Department believes these privileges may promote continued rehabilitation and positive programming within the NDS inmate population by allowing these inmates to retain specific privileges afforded to them in a GP setting which will not jeopardize the safety and security of the ASU.

Comment 3B: Commenter believes the Department erroneously presumes that a prisoner may pass items that would be considered contraband to another class of prisoners. Commenter believes that and an inmate classified as NDS should be given the benefit of the doubt that they would abide by the law.

Accommodation: None.

Response 3B: The Department recognizes inmates that are placed in ASU for Administrative reasons may not prove as high of a threat to the safety and security of the institution; however the majority of inmates placed in ASU includes those with a history of and/or occurrences of in-prison violence. For safety reasons of inmates and staff, some property will continue to be disallowed in ASU regardless of Privilege Group. These items if allowed, may become accessible to those inmates not designated NDS, and may become fashioned into possible weapons which could be used to assault inmates and staff.

Commenter #4

Comment 4A: Commenter states that the regulations do not have provisions to make them retroactive and that it would be fair and reasonable if prisoners who may have previously qualified be given the benefit of the regulation, as well as time credit.

Accommodation: None.

Response 4A: Inmates will be identified as NDS through Institution Classification Committee action, based upon review of placement. Current regulations provide reasonable timelines of review with intervals of no more than 90 days, as provided for in Section 3335. NDS does not allow for any modifications to credit earning. All Credit earning is driven by Penal Code Section 2933 and cannot be changed without legislative action.

Commenter #5:

Comment 5A: Commenter questions how the regulations would affect a recently validated gang-prisoner, and contends that in most cases a prisoner put into Administrative Segregation pending a validation is administrative and non-disciplinary. Commenter questions if the NDS property matrix would apply to these inmates as well.

Accommodation: None.

Response 5A: Inmates that are placed into ASU pending validation as a Security Threat Group (STG) member or associate present an immediate threat to the safety of others and/or the security of the institution; therefore, they do not meet the criteria for NDS. There are instances where an inmate is placed in ASU for administrative reasons such as: placement for safety concerns, investigations not related to misconduct or criminal activity, or being a relative or associate of a prison staff member who works at the institution where the inmate is currently housed. These inmates still constitute a concern within the general population but produce less of a threat to ASU security based on their lack of current misconduct. STG members or associates are placed into ASU for the safety and security of the institution and as a result of their own behavior and/or criminal misconduct and are designated Privilege Group D; therefore, they are not subject to the NDS Personal Property Matrix.

Commenter #6:

Comment 6A: Commenter questions if a validated gang member placed in Segregated housing for non-disciplinary administrative reasons qualify for the anticipated benefits of the proposed regulations.

Accommodation: None

Response 6A: Please refer to Response 5A. However, if a validated STG member or associate is retained in ASU solely for the purpose of debriefing, their reason for retention in ASU shall be noted as safety concerns and they may be designated NDS.

Comment 6B: Commenter asked if a validated inmate has a fourteenth amendment right of due process of law to meet the qualifications of an NDS inmate and equal protection of laws to be afforded the same opportunity as stated in the new subsection 3044(c)(6)(A).

Accommodation: None

Response 6B: Please refer to Response 4A and 5A. Additionally, all inmates housed in ASU are afforded due process rights in the form of Initial Classification Hearings within timeframes provided for in Section 3335.

Commenter #7

Comment 7A: Commenter asked how these regulations apply to a validated prison gang member with no disciplinary/no misconduct.

Accommodation: None

Response 7A: Please refer to Response 5A.

Commenter #8

Comment 8A: Commenter identified themselves as a retired senior supervising psychologist who managed mental health care in administrative segregation for years. Commenter endorses proposed changes as they appear to create positive financial and humanitarian benefits by reducing the number of inmates who require mental health treatment based on suicidal ideations and suicide attempts.

Accommodation: None

Response 8A: The Department did not determine any significant financial impact or gain, however, the Department welcomes the endorsement and is receptive in recognizing any benefits resulting from the adoption and implementation of these regulations.

Commenter #9

Comment 9A: Commenter states that the NDS Personal Property Matrix does not allow Polaroid pictures. Commenter states that there is no safety or security issue with allowing an NDS inmate possession of these photographs as they were legitimately purchased from a visiting room in the past (prior to the department changing to digital a few years ago). Commenter

believes that these photographs should be allowed to NDS inmates as they are important keepsakes and cherished possessions.

Accommodation: None

Response 9A: The Department disagrees. Polaroid pictures are deemed a safety and security threat. Polaroid pictures have a double layer that can be separated and contraband hidden inside, e.g., money or drugs. In addition, if the layers of a Polaroid picture are peeled open, the developing chemicals in the film are strongly alkaline and can cause deep chemical burns if left on the skin and/or serious eye damage.

Commenter #10

Comment 10A: Commenter states that while the regulation revisions are laudable, they do not go far enough. Commenter believes that due to the length of time a person may be placed in NDS (6 months to a 1 year) prior to transfer, and that the deprivation of personal property is punitive in nature and an authorized disciplinary sanction, that the regulations should allow all personal property authorized for General Population also be allowed for Non Disciplinary Segregation.

Accommodation: None

Response 10A: Please refer to Response 3A.

ADDENDUM TO THE FINAL STATEMENT OF REASONS

Non Disciplinary Segregation

OAL File Number 2014-0220-02C, including the Final Statement of Reasons, is incorporated by reference.

Imposition of locale mandates

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (section 17561) of Division 4.

Documents available to Public

The Non-Disciplinary Segregation Personal Property Matrix which was incorporated by reference was available upon request from the agency.

Documents incorporated by reference

The NDS Personal Property matrix was incorporated by reference as publication of the documents was determined to be cumbersome, and otherwise impractical.